

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

City of Anoka,

Complainant,

vs.

Counter-ACT, Kris Lindberg,

Respondents.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING**

To: Counter-ACT, c/o Kris Lindberg, 535 Van Buren Street, Anoka, MN 55303, and Amy Oehlers, Anoka City Clerk, 2015 First Avenue, Anoka, MN 55303.

On November 29, 2004, the City of Anoka filed a Complaint with the Office of Administrative Hearings alleging that Counter-ACT violated Minn. Stat. § 211A.05 by failing to timely file a campaign financial report certification of filing. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of section 211A.05. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for a prehearing conference and evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the prehearing conference and evidentiary hearing, and the three judges assigned to it, within one week of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: December 1, 2004

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

Minnesota Statutes § 211A.05, requires candidates or treasurers of committees formed to promote or defeat a ballot question to certify to the "filing officer"^[1] that all financial reports required by section 211A.02 have been submitted to the filing officer or that the candidate or committee have not received contributions or made disbursements exceeding \$750 in the calendar year. The certification of filing is required to be submitted to the filing officer no later than seven days after the general or special election.

Pursuant to Minnesota Statutes § 211A.05, subd. 2, if a candidate or committee fails to file the certification of filing on the date it is due, the filing officer shall immediately notify the candidate or committee of the failure to file. If the certification is not filed within ten days after the notification is mailed, the filing officer shall file a complaint under section 211B.32.^[2]

According to the complaint, Counter-Act failed to file its certification within seven days of the general election. Amy Oehlers is the Anoka City Clerk and Filing Officer for the city. The Complaint alleges that on November 12, 2004, Ms. Oehlers mailed a notice to Ms. Kris Lindberg. Ms Lindberg had signed a Campaign Financial Report for Counter-ACT, which was submitted to the City of Anoka on October 15, 2004. The notice advised Ms. Lindberg that a violation of Minn. Stat. § 211A.05 had occurred and directed her to fill out and submit the Certification of Filing to the City's office by November 22, 2004. A blank Certification of Filing form was enclosed with the notice. On November 29, 2004, the City of Anoka received the Certification of Filing from Ms. Lindberg.

Because Counter-ACT's certification of filing was not filed within ten days after the notification was mailed, the Complaint states a prima facie violation of Minn. Stat. § 211A.05. Pursuant to Minn. Stat. § 211B.33, subd. 2(d), this matter shall be set on for an evidentiary hearing before a panel of three administrative law judges.

S.M.M.

^[1] Minn. Stat. § 211A.01, subd. 7, defines “filing officer” to mean the officer authorized by law to accept affidavits of candidacy or nominating petitions for an office or the officer authorized by law to place a ballot question on the ballot.

^[2] Minn. Stat. § 211A.05, subd. 2.